

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

SHIPPING and TRANSIT, LLC,

Plaintiff,

Case No. \_\_\_\_\_

vs.

**DEMAND FOR JURY TRIAL**

GAMEFLY, INC.,

Defendant.

\_\_\_\_\_ /

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff, Shipping and Transit, LLC, by and through its undersigned counsel, hereby sues Defendant, GAMEFLY, INC.. (“GAMEFLY”), and in support, alleges as follows:

**NATURE OF THE LAWSUIT**

1. This is an action for patent infringement of United States Patent Number 7,400,970 arising under the patent laws of the United States, Title 35 of the United States Code.

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1338; and 35 U.S.C. § 271.

3. This Court has personal jurisdiction over GAMEFLY pursuant to, *inter alia*, Florida’s long-arm statute, § 48.193, in that GAMEFLY: (a) operates, conducts, engages in, and/or carries on a business or business adventure(s) in Florida and/or has an office or agency in Florida; (b) has committed one or more tortious acts within Florida; (c) was and/or is engaged in substantial and not isolated activity within Florida; and/or (d) has purposely availed itself of Florida’s laws, services and/or other benefits and therefore should reasonably anticipate being haled into one or more of the courts within the State of Florida.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400.

**THE PLAINTIFF**

5. Plaintiff, Shipping and Transit, LLC, is a Florida Limited Liability Company with a principal place of business located in Boynton Beach, Florida.

**THE DEFENDANT**

6. Defendant, GAMEFLY, is a Delaware Corporation with a principal place of business in Los Angeles, California. Upon information and belief, GAMEFLY transacts business, as well as offices and goods for sale, in Florida and within this Judicial District through use of its electronic tracking, text, email and other messaging to customers within this State and Judicial District. GAMEFLY has a Registered Agent located in Tallahassee, Florida, and has, as is readily apparent, at a minimum, offered to provide and/or has provided to customers specifically within this Judicial District and throughout the State of Florida services and/or products that infringe claims of the 7,400,970.

**THE PLAINTIFF'S PATENTS**

7. Plaintiff owns all rights, titles and interests in, and/or has standing to sue for infringement of United States Patent Number 7,400,970 (“the ‘970 patent”), entitled “System and Method for an Advance Notification System for Monitoring and Reporting Proximity of a Vehicle”, issued July 15, 2008. A copy of the ‘970 patent is attached hereto as Exhibit 1.

**COUNT I**  
**DIRECT PATENT INFRINGEMENT**

8. Plaintiff hereby incorporates Paragraphs 1 through 7 set forth above as if fully set forth herein.

9. Pursuant to 35 U.S.C. § 271(a), GAMEFLY has directly infringed claims of the 7,400,970 patent through, among other activities, products, programs, applications, functions,

systems and methods, the use of tracking and notification technologies within its “ADVANCE SHIP NOTICE” and “SHIPPING CONFIRMATION EMAIL” (“You will be emailed from Gamefly when the game has shipped, “we will send you an email when we have received a returned game and *another email when your new game has been shipped*” gamefly.com) services that are protected within the 7,400,970 patent, as every claim limitation, or its equivalent, is found in these functions, applications, solutions, devices, programs, products, services, methods and/or systems.

10. GAMEFLY'S direct infringement has injured and will continue to injure Plaintiff unless and until a monetary judgment is entered in favor of Plaintiff and/or the Court enters an injunction prohibiting further infringement and, specifically, enjoining further use of methods and systems that come within the scope of the 7,400,970 patent.

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment against GAMEFLY and its subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with GAMEFLY, granting the following relief:

A. An award of damages against GAMEFLY adequate to compensate Plaintiff for the infringement that has occurred with respect to GAMEFLY, together with prejudgment interest from the date that GAMEFLY'S infringement of the patents at issue began;

B. Increased damages as permitted pursuant to 35 U.S.C. § 284;

C. A finding that this case is exceptional and award to Plaintiff its attorney's fees and costs as provided by 35 U.S.C. § 285;

D. A permanent injunction against GAMEFLY prohibiting further infringement of the patents at issue; and,

E. All other relief as the Court or a jury may deem proper and just in this instance.

**COUNT II**  
**INDIRECT PATENT INFRINGEMENT**

11. Plaintiff hereby incorporates Paragraphs 1 through 7 set forth above as if fully set forth herein.

12. Pursuant to 35 U.S.C. §§ 271(b) and (c), GAMEFLY has indirectly infringed claims of the 7,400,970 patent through, among other activities, products, programs, applications, functions, systems and methods, the use of tracking and notification technologies within its “ADVANCE SHIP NOTICE” and “SHIPPING CONFIRMATION EMAIL” (“You will be emailed from Gamefly when the game has shipped, “we will send you an email when we have received a returned game and *another email when your new game has been shipped*” gamefly.com) services that are protected within the 7,400,970 patent, as GAMEFLY actively and intentionally induced infringement with knowledge that the induced acts constituted infringement, or acted with willful blindness; and/or contributed to infringement by one or more third parties as GAMEFLY had knowledge, rather than intent, that its activity caused such infringement.

13. GAMEFLY’S contributory infringement and/or inducement to infringe has injured and will continue to injure Plaintiff unless and until a monetary judgment is entered in favor of Plaintiff and/or the Court enters an injunction prohibiting further infringement and, specifically, enjoining further use of methods and systems that come within the scope of the 7,400,970 patent.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment against GAMEFLY and its subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with GAMEFLY, granting the following relief:

- A. An award of damages against GAMEFLY adequate to compensate Plaintiff for the infringement that has occurred with respect to GAMEFLY, together with prejudgment interest from the date that GAMEFLY'S infringement of the patents at issue began;
- B. Increased damages as permitted pursuant to 35 U.S.C. § 284;
- C. A finding that this case is exceptional and award to Plaintiff its attorney's fees and costs as provided by 35 U.S.C. § 285;
- D. A permanent injunction against GAMEFLY prohibiting further infringement of the patents at issue; and,
- E. All other relief as the Court or a jury may deem proper and just in this instance.

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: November 20, 2015.

Respectfully submitted,

/s/ Jason P. Dollard  
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